

FRANK DIXON,	)	No. 2:22-cv-09135-AB-JDE
	)	
Petitioner,	)	
	)	ORDER TO SHOW CAUSE
v.	)	WHY THE PETITION
	)	SHOULD NOT BE
UNKNOWN,	)	DISMISSED
	)	
Respondent.	)	

On December 15, 2022, the Court received from Frank Dixon (“Petitioner”), a California state prisoner at North Kern State Prison proceeding pro se, a “Petition for Writ of Habeas Corpus” on a California state form, seeking to challenge a July 2019 conviction following a jury trial and August 2019 sentence of 17 years and four months imposed by the Superior Court for the State of California, County of Los Angeles County for violations of “12022.7(A) 667(A)(1). Dkt. 1 (“Petition” or “Pet.”) at 2.

Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (“Habeas Rules”), the Court has reviewed the Petition,

1 finds it appears to suffer from several defects and orders Petitioner to respond  
2 as set forth further below.

## 3 II.

### 4 PROCEDURAL HISTORY

5 As noted, the judgment of conviction that Petitioner seeks to challenge  
6 was imposed by the Los Angeles County Superior Court in 2019 in case  
7 number VA146759. Pet at 2. The Petition asserts a single ground for relief,  
8 which, in its entirety, states: “12022.1(A) 667(A)91) 667.5.” Pet. at 3. In  
9 support, Petitioner asserts, in full: “The Judge Ito impose the high term when  
10 at my sentencing when he cannot do so because there were never no  
11 aggravating factors to do so.” *Id.* Petitioner asserts that he appealed the  
12 conviction in the Second Appellate Court Division 4, resulting in the case  
13 being “fully reversed” in December 2021 in case number B229436 (this case  
14 number appears to be in error). *Id.* at 5. Petitioner asserts that he also sought  
15 review by the California Supreme Court in case number B299436 resulting in  
16 the case being “remanded back to [trial] court” on an unspecified date. *Id.*

17 According to California Appellate Court on-line information, on  
18 October 19, 2020, the California Court of Appeal, Second Appellate District,  
19 Division Four, in People v. Frank Dixon, Case No. B299436, “conditionally  
20 reversed” Petitioner’s judgment of conviction and remanded to the trial court  
21 with directions to conduct a diversion eligibility hearing under Cal. Penal  
22 Code § 1001.36. See Appellate Courts Case Information (“Appellate Courts”)  
23 at <https://appellatecases.courtinfo.ca.gov>.<sup>1</sup> The Appellate Courts also indicate

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24 <sup>1</sup> Courts may take judicial notice of the existence of court filings and another  
25 court’s orders. See Holder v. Holder, 305 F.3d 854, 866 (9th Cir. 2002) (taking  
26 judicial notice of opinion and briefs filed in another proceeding); United States ex rel.  
27 Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir.  
28 1992) (courts “may take notice of proceedings in other courts, both within and  
without the federal judicial system, if those proceedings have a direct relation to  
matters at issue” (citation omitted)).

1 a Petition for Review in Petitioner's case was filed with the California Supreme  
2 Court, with the Petition being denied on December 23, 2022 in Case No.  
3 S265091. Id. On-line records of the Los Angeles County Superior Courts for  
4 People v. Frank Dixon, Case No. VA146759, confirm trial proceedings in July  
5 2019 and reflected subsequent proceedings at the trial court level in 2021 and  
6 2022, with a Notice of Appeal following those subsequent proceedings filed on  
7 August 3, 2022. See <https://www.lacourts.org>.

8 As noted, the Court received the Petition, on a state court form, on  
9 December 12, 2022, although the signature line states that it was signed on  
10 December 23, 2022.

### 11 **III.**

### 12 **DISCUSSION**

13 Pursuant to Rule 4 of the Habeas Rules, the Court must review the  
14 Petition and, if it plainly appears from the Petition and any attached exhibits  
15 that Petitioner is not entitled to relief, the Court must dismiss the Petition.  
16 Here, the Petition appears subject to dismissal for at least three and possibly  
17 five reasons: (1) Petitioner has not submitted his Petition on the form habeas  
18 petition approved by the Central District of California; (2) Petitioner asserts a  
19 single vague claim that does not facially assert any federal constitutional error;  
20 (3) Petitioner has not named an appropriate respondent; in addition, (4) the  
21 Petition may be unexhausted; and (5) the Petition may be subject to Younger  
22 abstention, all as explained further below.

23 First, the Petition was not submitted on a form approved by this district.  
24 Rule 2(d) of the Habeas Rules authorizes district courts to require habeas  
25 petitions be filed in a form prescribed by the Local Rules. This Court has such  
26 a Local Rule. See Local Rule 83-16.1 ("A petition for writ of habeas corpus . . .  
27 shall be submitted on the forms approved and supplied by the Court."). The  
28 Petition is subject to dismissal for failure to use a Court-approved form.

1 Second, Petitioner has not clearly set forth the grounds that plausibly  
2 suggest entitlement to relief. Habeas Rules 2(c) and 4 require a statement of all  
3 grounds for relief and the facts supporting each ground; the petition should  
4 state facts that point to a real possibility of constitutional error and show the  
5 relationship of the facts to the claim. See Habeas Rule 4, Advisory Committee  
6 Notes to 1976 Adoption; Mayle v. Felix, 545 U.S. 644, 655 (2005); O’Bremski  
7 v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) (as amended). Allegations in a  
8 petition that are vague, conclusory, palpably incredible, or unsupported by a  
9 statement of specific facts, are insufficient to warrant relief, and are subject to  
10 summary dismissal. See, e.g., Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir.  
11 1995); James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994). Here, the Petition only  
12 asserts numbers as the basis for the Petition, allegations that are vague and do  
13 not facially reflect the real possibility of federal constitutional error. As such,  
14 the Petition is subject to dismissal.

15 Third, Petitioner has not named a proper respondent. The Ninth Circuit  
16 has held the failure to name the correct respondent destroys personal  
17 jurisdiction. See Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996)  
18 (as amended); Stanley v. Cal. Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994)  
19 (as amended). Typically, the proper respondent for a habeas petition is the  
20 warden of the facility in which the petitioner is incarcerated. See Stanley, 21  
21 F.3d at 360; see also Habeas Rule 2(a) (“If the petitioner is currently in custody  
22 under a state-court judgment, the petition must name as respondent the state  
23 officer who has custody.”).

24 Separately, under 28 U.S.C. § 2254(b)(1), federal habeas relief may not  
25 be granted unless Petitioner has exhausted the remedies available in state  
26 courts or an exception to the exhaustion requirement applies. Exhaustion  
27 requires that the petitioner’s claims be fairly presented to the state courts and  
28 be disposed of on the merits by the highest court of the state. James, 24 F.3d at

24; Carothers v. Rhay, 594 F.2d 225, 228 (9th Cir. 1979); see also Libberton v. Ryan, 583 F.3d 1147, 1164 (9th Cir. 2009). A claim has not been fairly presented to a state court unless the petitioner has described both the operative facts and the federal legal theory on which the claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66 (1995) (per curiam); Picard v. Connor, 404 U.S. 270, 275-78 (1971); Greenway v. Schriro, 653 F.3d 790, 801 (9th Cir. 2011). As a matter of comity, a federal court will not entertain a habeas corpus petition unless the petitioner has exhausted the available state judicial remedies on every ground presented in the petition. See Rose v. Lundy, 455 U.S. 509, 518-22 (1982). Petitioner has the burden of demonstrating that he has exhausted his available state remedies. See, e.g., Williams v. Craven, 460 F.2d 1253, 1254 (9th Cir. 1972) (per curiam). Here, because Petitioner has not clearly set forth his claims, and because Petitioner does not use an approved form that would require information about exhaustion, the Court does not make a determination as to whether those claims have been exhausted, but notifies Petitioner of the requirement should Petitioner opt to file an amended petition.

In addition, as noted, state court records reflect ongoing proceedings in the superior court in 2022 and reflect a “Notice of Appeal” filed in those proceedings in August 2022. To the extent Petitioner requests that this Court intervene in his ongoing state criminal proceeding, including while the proceeding is on appeal, Younger abstention is warranted. Comity and federalism require federal courts to abstain from intervening in pending state criminal proceedings absent extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 43-45 (1971). Younger abstention is warranted when: (1) the state court proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the state proceeding provides an adequate opportunity to raise constitutional challenges; and (4) the requested relief “seek[s] to enjoin” or has “the practical effect of enjoining” the ongoing state judicial proceeding.

1 Arevalo v. Hennessy, 882 F.3d 763, 765 (9th Cir. 2018) (citation omitted). In  
 2 such circumstances, federal district courts should abstain from intervening in  
 3 the ongoing state criminal proceeding absent extraordinary circumstances. See,  
 4 e.g., Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423,  
 5 435-37 (1982); (absent a showing of “bad faith, harassment, or some other  
 6 extraordinary circumstance,” federal courts should abstain from interfering in  
 7 ongoing state judicial proceedings); Kugler v. Helfant, 421 U.S. 117, 130  
 8 (1975) (explaining that Supreme Court precedent establishes that “at least in  
 9 the absence of ‘extraordinary circumstances’ federal courts must refuse to  
 10 intervene in state criminal proceedings to suppress the use of evidence claimed  
 11 to have been obtained through unlawful means”).

#### 12 IV.

#### 13 ORDER

14 For the foregoing reasons, the Petition is subject to dismissal. Petitioner  
 15 is ORDERED TO SHOW CAUSE, in writing, by **no later than thirty (30)**  
 16 **days from the date of this Order**, why this action should not be dismissed  
 17 under Habeas Rule 4 for the reasons stated above. To the extent Petitioner  
 18 contends he has exhausted his state court remedies, Petitioner is directed to  
 19 provide information regarding his efforts to exhaust his claims in the state  
 20 courts, and attach copies of any documents establishing that his claims are  
 21 indeed exhausted.

22 Alternatively, Petitioner may file an amended petition **within thirty (30)**  
 23 **days of the date of this Order** to attempt to cure the above-referenced defects.  
 24 The Clerk is directed to send Petitioner a blank copy of the Central District  
 25 habeas petition form for this purpose. The amended petition should reflect the  
 26 same case number, be clearly labeled “First Amended Petition,” and be filled  
 27 out completely, including naming the appropriate respondent. In ¶ 8 of the  
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1 First Amended Petition, Petitioner should specify separately and concisely  
2 each federal constitutional claim that he seeks to raise and answer all of the  
3 questions pertaining to each such claim. If Petitioner contends that he  
4 exhausted his state remedies, he should list such filings in ¶¶ 4-6 of the habeas  
5 petition form. Petitioner should specify all of the grounds raised in such filings,  
6 along with the case number, the date of decision, and the result. Petitioner  
7 should also answer all questions and provide all information regarding any  
8 ongoing proceedings in state court.

9 Petitioner is cautioned that a failure to respond timely in compliance  
10 with this Order could result in this action being dismissed for the foregoing  
11 reasons, for failure to prosecute, and for failure to comply with a Court order.  
12 See Fed. R. Civ. P. 41(b).

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14 Dated: December 20, 2022

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17 JOHN D. EARLY  
18 United States Magistrate Judge  
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